

**DRAFT ONLY
NOT APPROVED FOR
INTRODUCTION**

HOUSE BILL NO.

Trust company amendments.

Sponsored by: Joint Minerals, Business & Economic
Development Interim Committee

A BILL

for

1 AN ACT relating to trust companies; establishing procedures
2 for mergers and acquisitions of supervised trust companies;
3 authorizing supervised trust company branching related to
4 mergers and acquisitions; amending the composition of the
5 state banking board to include public trust company
6 members; amending the definition of "trust company";
7 amending other trust company definitions; authorizing
8 bankruptcy filing requirements; amending applicability of
9 organization requirements; amending meeting requirements
10 for chartered family trust companies; authorizing
11 rulemaking; and providing for an effective date.

12

1 *Be It Enacted by the Legislature of the State of Wyoming:*

2

3 **Section 1.** W.S. 13-5-426 is created to read:

4

5 **13-5-426. Mergers and acquisitions of supervised trust**
6 **companies.**

7

8 (a) As used in this section:

9

10 (i) "Consummation" means the moment when a merger
11 or acquisition becomes effective;

12

13 (ii) "Former trust company" means a trust company
14 or business entity that will cease operations after a
15 merger or acquisition;

16

17 (iii) "Resulting trust company" means the trust
18 company or business entity that will continue operations
19 after a merger or acquisition under an existing trust
20 company charter or other authority to operate as specified
21 by the laws of another state;

22

1 *****
 2 *****
 3 STAFF COMMENT
 4 The Committee may wish to consider whether language in
 5 paragraph (iii) above is necessary to contemplate a merged
 6 or acquired company operating under a new charter (for
 7 example, if the resulting trust company becomes a public
 8 trust company as provided in W.S. 13-5-522).
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 10 *****
 11 *****
 12 *****

13 (iv) "Supervised trust company" means as defined
 14 by W.S. 13-5-301(a)(xv) and shall include a trust company
 15 substantially similar to a supervised trust company that is
 16 chartered or otherwise operating under the laws of another
 17 state, as determined by rule of the commissioner.

18
 19 (b) A supervised trust company seeking to acquire or
 20 merge with another trust company, including a trust company
 21 chartered or otherwise operating under the laws of another
 22 state shall acquire or merge with another trust company as
 23 provided by this section.

24
 25 (c) A supervised trust company that is proposed to
 26 become a resulting trust company after a merger or
 27 acquisition pursuant to subsection (b) of this section
 28 shall apply for a certificate of merger or acquisition not

1 less than seventy-five (75) days before the proposed
2 consummation date. The commissioner may conduct an
3 investigation, examination or hearing into the application
4 as the commissioner deems necessary. The commissioner shall
5 approve or deny the application not later than sixty (60)
6 days after receipt of the application.

7

8 (d) An application filed under subsection (c) of this
9 section shall include the following information in a form
10 determined by the commissioner:

11

12 (i) Information relating to the character of the
13 parties to the proposed merger or acquisition, including
14 current business operations, organizational structure,
15 management, affiliations and any pending judicial or
16 administrative proceedings;

17

18 (ii) The financial statements of all parties to
19 the proposed merger or acquisition for each of the parties'
20 current fiscal year and each of the four (4) preceding
21 fiscal years;

22

1 (iii) The final plan, terms and conditions of the
2 merger or acquisition;

3

4 (iv) All records and certifications required by
5 subsection (f) of this section;

6

7 (v) A description of any proposed material
8 changes to the former trust company and resulting trust
9 company, including business operations, structure,
10 management, affiliations, name or location, including any
11 contemplated liquidation, asset sales or further mergers or
12 acquisitions;

13

14 (vi) The identification of any person compensated
15 to make solicitations or recommendations related to the
16 proposed merger or acquisition, except for any person who
17 provides legal advice related to the merger or acquisition;

18

19 (vii) Copies of all invitations, tenders or
20 advertisements making a tender offer for the purchase of
21 stock or ownership positions related to the proposed merger
22 or acquisition;

23

1 (viii) The source of funds for the proposed
2 merger or acquisition, including any terms and conditions
3 related to those funds;

4

5 (ix) Any other information material to the
6 proposed merger or acquisition that the commissioner
7 requests or requires.

8

9 *****
10 *****
11 STAFF COMMENT

12
13 Subsection (d) above specifies the requirements for
14 information submitted to the banking commissioner as part
15 of an application for merger/acquisition. The Committee may
16 wish to consider whether it is necessary to expressly
17 require the commissioner to create an application form.

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19 *****
20 *****

21

22 (e) The commissioner shall approve or deny an
23 application filed under this section upon consideration of
24 the following factors, if applicable:

25

26 (i) The projected impact of the proposed merger
27 or acquisition on competition for trust company business in
28 Wyoming;

29

1 (ii) Whether the proposed merger or acquisition
2 would prejudice the interests of trust company customers;

3

4 (iii) The character and financial status of the
5 parties to the proposed merger or acquisition, including
6 the resulting trust company;

7

8 (iv) Whether the proposed merger or acquisition,
9 once completed, would comply with all applicable laws;

10

11 (v) The results of any investigation,
12 examination, hearing or request for information conducted
13 as provided by this section.

14

15 (f) Before filing an application under this section,
16 the terms and conditions of the acquisition or the plan of
17 merger shall be approved and documented in writing by the
18 shareholders or members and the board of directors or
19 managers of each trust company participating in the merger
20 or acquisition. Approval for the terms and conditions or
21 plan of merger shall be sought as required by the governing
22 documents of each trust company and other applicable law.
23 The appropriate officers of each trust company shall

1 certify compliance with this subsection with the
2 commissioner.

3

4 (g) Upon approval of a merger or acquisition by the
5 commissioner and upon consummation of the merger or
6 acquisition:

7

8 (i) A former trust company shall surrender its
9 charter and, if required by the commissioner, dissolve the
10 underlying business entity and take all other necessary
11 related actions, including those in accordance with the
12 approved final plan of merger or acquisition. If a former
13 trust company is chartered or otherwise operating under the
14 laws of another state, the former trust company shall take
15 all actions required by the laws of that state;

16

17 (ii) The resulting trust company shall assume the
18 assets and liability of the former trust company without
19 further action, except as provided by the final plan, terms
20 and conditions of the acquisition or merger;

21

22 (iii) Unless otherwise specified in a customer
23 agreement, by the terms and conditions of the acquisition

1 or merger or other applicable law, the resulting trust
2 company shall become the successor trustee of all customer
3 accounts of the former trust company;

4

5 (iv) The resulting trust company may conduct
6 trust company business and other permissible activities
7 under the laws of Wyoming to the same extent as the former
8 trust company;

9

10 (v) The resulting trust company may use the name
11 of a former trust company or may select a new name. The
12 resulting trust company shall notify the commissioner of
13 the name it selects;

14

15 (vi) Any reference to a former trust company in a
16 writing shall be considered a reference to the resulting
17 trust company if not otherwise inconsistent with the
18 writing and the laws of Wyoming;

19

20 (vii) The resulting trust company shall file the
21 certificate of merger or acquisition with the secretary of
22 state.

23

1 (h) A resulting trust company shall not maintain more
2 than two (2) trust company branches in other states after
3 consummation of a merger or acquisition.

4

5 (j) The commissioner shall adopt any rules necessary
6 to implement the provisions of this section.

7

8 **Section 2.** W.S. 13-1-604(b), 13-5-301(a)(xvi), 13-5-
9 417 by creating a new subsection (f), 13-5-501 by creating
10 a new subsection (e), 13-5-603 by creating a new subsection
11 (e) and 13-5-604 by creating a new subsection (b) are
12 amended to read:

13

14 **13-1-604. State banking board created; purpose;**
15 **membership; appointment; qualifications; term of office.**

16

17 (b) The state banking board shall consist of ~~seven~~
18 ~~(7)~~ nine (9) members who shall be appointed by the
19 governor. The director shall serve as an ex officio member
20 of the board. Of the appointed members, ~~four (4)~~ five (5)
21 shall be officers or directors of state or national banks
22 ~~chartered under the laws of~~ domiciled in Wyoming, ~~one (1)~~
23 ~~shall be an officer or director of national banks chartered~~

1 ~~under the laws of the United States and authorized to do~~
2 ~~business in Wyoming~~ two (2) members shall be officers or
3 directors of public trust companies as defined by W.S. 13-
4 5-301(a)(xiv), and two (2) members shall be residents of
5 Wyoming who are not ~~an officer or director~~ officers,
6 directors or employees of any bank or public trust company.
7 No member of the banking board shall have any interest,
8 directly or indirectly, in a bank or public trust company
9 in which any other member of the banking board has any
10 interest. Any member of the board who ceases to have the
11 qualifications for which the member was appointed shall be
12 disqualified to serve and a vacancy shall occur.

13

14 **13-5-301. Definitions.**

15

16 (a) As used in this chapter:

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18 (xvi) "Trust company" means a corporation or
19 limited liability company that is incorporated or organized
20 in this state or a foreign corporation or limited liability
21 company that is qualified to do business in this state ~~as a~~
22 ~~trust company~~ and that is engaged in trust company
23 business;

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13-5-417. Insolvency; unsafe condition; receivership.

(f) If determined by the commissioner to be in the best interests of both the state and the supervised trust company, the commissioner may require the supervised trust company to file a petition under title 11 of the United States Code in lieu of a receivership under this section.

STAFF COMMENT

W.S. 13-5-417(f), created above, would authorize the banking commissioner to require a supervised trust company to file for bankruptcy as provided by federal law.

The United States Constitution grants the federal government the power to establish uniform bankruptcy laws. U.S. Const. art. 1, § 8. As a result, "bankruptcy law is paramount" to state law. In re Watts, 190 U.S. 1, 27 (1903). While state law may govern whether a person is authorized to file a bankruptcy petition on behalf of an entity, see Keenihan v. Heritage Press, Inc., 19 F.3d 1255, 1259 (8th Cir. 1994), it is unclear whether state law can compel a business entity to file a petition for bankruptcy under federal law, see In re Watts, 190 U.S. at 27 (stating that "the jurisdiction of the Federal courts in bankruptcy, when properly invoked, in the administration of the affairs of insolvent persons and corporations, is essentially exclusive); In re Kreislers, Inc., 112 B.R. 996, 999 (Bankr. D.S.D. 1990) ("Preemption mandates Congress and the federal court system maintain exclusive jurisdiction of deciding who can and cannot be a bankrupt.").

1 Brief research revealed no case where a court considered
 2 the legality of a state law authorizing the state to compel
 3 a business to file a lawsuit. At least one court has held
 4 that, if an entity is governed by federal law, a state law
 5 requiring the entity to complete state filing or
 6 registration requirements before maintaining a lawsuit in
 7 that state cannot apply to those entities. See First Nat'l
 8 Bank of Tonasket v. Slagle, 5 P.2d 1013, 1014 (Wash. 1931).

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 11 *****
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13 13-5-501. Formation and organizational instrument.

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 15 (e) This section shall not apply to a foreign
 16 corporation or foreign limited liability company that is
 17 qualified to do business in this state and that applies for
 18 a charter under this article.

19
 20 13-5-603. Organization of a chartered family trust
 21 company.

22
 23 (e) This section shall not apply to a foreign
 24 corporation or foreign limited liability company that is
 25 qualified to do business in this state and that applies for
 26 a charter under this article.

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